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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/674,904  | 09/30/2003  | Cecil Kost           | MMSI121562          | 8999             |
| 26389   | 7590        | 01/31/2005           | EXAMINER            |                  |
| CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC<br>1420 FIFTH AVENUE<br>SUITE 2800<br>SEATTLE, WA 98101-2347 |             |                      | LASTRA, DANIEL      |                  |
|   |             | ART UNIT             | PAPER NUMBER        |                  |
|   |             | 3622                 |                     |                  |

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/674,904             | KOST ET AL.         |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | DANIEL LASTRA          | 3622                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 16 July 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-50 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) \_\_\_\_\_ is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) 1-50 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Claims 1-50 have been examined. Application 10/674,904 has a filing date 09/30/2003 and Claims Priority from Provisional Application 60/472,956 (05/22/2003).

***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, 16-25, 31-45 drawn to allowing prescribers to order drug samples to dispense to patients without the use of sales representative. The drug samples include printed coupons, vouchers or physical samples, classified in class 705, subclass 14.
- II. Claims 11-15 and 26-30 drawn to marketing pharmaceutical drugs, classified in class 705, subclass 10, 28.
- III. Claims 46-50, drawn to creating a stream of revenue from a drug sample distribution, classified in class 705, subclass 26, 27.

The inventions are distinct, each from the other because of the following reasons: Inventions I-III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as allowing prescribers to order drug samples without the need of a sale representative, where the drug samples include printed coupons or vouchers without the prescribers need to know how to market pharmaceutical drugs as in invention II and without the prescribers need to know how to create a stream of revenue from a drug sample distribution as invention III. Likewise, invention II has separate utility such as marketing pharmaceutical drugs

without the need to allow prescriber to order drugs samples without the use of a sale representative, as in invention I and without the prescribers need to know how to create a stream of revenue from a drug sample distribution, as invention III. Likewise, invention III has separate utility such as creating a stream of revenue from a drug sample distribution without the need of allowing a prescriber to order drug samples without the use of sales representative, as in invention I and without the prescribers need to know how to market pharmaceutical drugs, as invention II.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, group 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

The Examiner is scheduled to move to the new Alexandria office in April 2005 (or later). The Alexandria phone number would be 571-272-6720 and RightFax number 571-273-6720. The examiner's supervisor, Eric W. Stamber, new Alexandria number would be 571-272-6724. The current numbers would be in service until the move.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DL  
Daniel Lastra  
January 5, 2005

Yohlega Rettie  
Primary Examiner  
AU 3622